IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3376 of 2007()

CC.489/2005 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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PETITIONER: ACCUSED NOS.3 & 4:

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1. RAJAGOPALA PILLAI, KAYATHUNKAL HOUSE,
   KANGAZHA VILLAGE, KOTTAYAM DISTRICT.

2. V.V.BABU, KALLADA HOUSE,
   MANAKAD VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.K.M.VARGHESE

RESPONDENTS: STATE, COMPLAINANT & DEFACTO-COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
   VAKATHANAM, KOTTAYAM.

3. ANNAMMA, W/O.JOSEPH,
   NECHIKKAT HOUSE, NEDUMKUNNAM, KOTTAYAM DISTRICT.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 3376 OF 2007

Dated this the 12th day of November, 2007

ORDER

The petitioners are accused 3 and 4 in a prosecution for offences punishable, inter alia, under Secs.420 and 409 read with Sec.34 of the IPC. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. The de facto complainant raised a grievance that the amounts in her bank – she is employed abroad and maintains a Non Resident Indian account with the bank, were siphoned out of the account and were transferred to the account of the 1st accused – her brother, in pursuance of the common intention of accused 1 to 4. Accused 2 to 4 including the petitioners herein are employees of the bank in which the de facto complainant maintained the account. The petitioners have received summons; but they have not appeared before the

learned Magistrate so far. They have come to this Court with a prayer that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings against them.

2. The crux of the contention of the petitioners is that the de facto complainant had orally informed that the amounts in her account may be transferred to her brother's account and the 2nd accused – the Manager, had acted in pursuance of such oral directions of the de facto complainant. The learned counsel for the petitioners contends that the petitioners have no contumacious role in transfer of the account from the de facto complainant to the account of her brother. They are being proceeded unnecessarily. In fact, the learned counsel further submits, the de facto complainant herself had reported that the disputes have been settled and she has no surviving grievance against all the accused persons.

3. The Code of Criminal Procedure does contemplate instances, though rare, where the allegations raised in a final report, on the basis of which cognizance is taken, may be groundless. On such occasions, the accused persons can certainly fall back on the provisions of Sec.239/240 of the Cr.P.C. to claim premature termination of the proceedings by discharge under Sec.239 of the Cr.P.C. Ordinarily and normally an

indictee who wants to claim premature termination of proceedings must hence rely on Sec.239/240 of the Cr.P.C. to claim discharge. Of course, in an appropriate case the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. can be invoked by a court in aid of justice to bring about such premature termination of proceedings. That, it is trite, can only be in an exceptional case where the interests of justice compellingly demand such course. Only then this court shall fall back on the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. I repeat, ordinarily and normally the provisions of the Code will have to be resorted to claim the premature termination of the proceedings. To consider such claim, all the materials relied on by the prosecution in support of its case will have to be scanned through by the court. In every such case, it may not be possible for this Court exercising the jurisdiction under Sec.482 of the Cr.P.C. to take over the functions of the subordinate criminal courts and decide whether the powers under Sec.482 of the Cr.P.C. can or need be invoked. Not that this Court does not have jurisdictional competence. In a fit case to invoke the powers under Sec.482 of the Cr.P.C. and quash the proceedings notwithstanding the existence of provisions in Sec.239/240 of the Cr.P.C. But resort to such powers under

Sec.482 of the Cr.P.C. can only be in an exceptional case where the interests of justice compellingly mandate that the court must follow such procedure.

4. I have heard the learned counsel for the petitioners in detail. I have been taken through the averments in the Crl.M.C. as also some of the documents relied on by the prosecution in the 173 documents furnished to the petitioners. I am not certainly satisfied that this is a fit case where such extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. can or ought to be invoked. I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure and claim premature termination of the proceedings by discharge under Sec.239 of the Cr.P.C.

5. In the result, this Crl.M.C. is dismissed. I may hasten to observe that I have not intended to express any opinion on the question of the entitlement of the petitioners to be discharged under Sec.239 of the Cr.P.C. I have only chosen to hold that this is not a fit case where the powers under Sec.482 of the Cr.P.C. can or ought to be invoked.

6. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the petitioner before the learned Magistrate, that would work

out great hardship and prejudice to the petitioners. I find no reason why the learned Magistrate should unnecessarily insist on the personal appearance of the petitioners on all dates of posting until the question of charge/discharge is decided under Sec.239/240 of the Cr.P.C. The petitioners can seek the leave of the learned Magistrate to appear through Pleader. If and only if the learned Magistrate feels that the charge is liable to be framed, need the personal appearance of the petitioners be insisted by the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge